

1 BILL LOCKYER
Attorney General
2 HERSCHEL T. ELKINS (Bar No. 027279)
Senior Assistant Attorney General
3 MARGARET REITER (Bar No. 124799)
Supervising Deputy Attorney General
4 MICHAEL R. BOTWIN (Bar No. 44879)
Deputy Attorney General
5 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-3664
6

COPY

11 SEP 18 10:40:02
LEGAL PROCESS 71

7 Attorneys for Plaintiff,
8 The People of the State of California
9

10
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SACRAMENTO
13

14 THE PEOPLE OF THE STATE OF CALIFORNIA

15
16 Plaintiff,

17 v.

18 EUROPEAN HEALTH CONCEPTS, INC.; KEVIN
M. TODD; KEITH HOWARD BUTTRICK;
19 ELAINE BARBARA AGER HERRINGTON; JOHN
EDLEY FITZWATER; DAVID ROBERT PERKINS;
20 and DOES 1 through 10, inclusive,

21 Defendants.
22

CASE NO. 02AS05440

COMPLAINT FOR CIVIL
PENALTIES, INJUNCTION,
RESTITUTION AND OTHER
RELIEF

23 Plaintiff, the People of the State of California, by and through Bill Lockyer, Attorney
24 General of the State of California, is informed and believes and on that information and belief
25 alleges the following:
26

27 **THE PARTIES**

28 1. The Attorney General brings this action at the request of the Division of Investigation,

1.

Complaint for Civil Penalties, Injunction, Restitution, and Other Relief

1 Department of Consumer Affairs.

2 2. Defendant **EUROPEAN HEALTH CONCEPTS, INC.** (hereinafter "EHC") is a
3 Florida corporation with its principal place of business located at 1711 Worthington Road, West
4 Palm Beach, Florida. It has not qualified to do business in California as required by Corporations
5 Code section 2105.

6 3. Defendant **KEVIN M. TODD** is the president and owner of EHC. He manages and
7 controls EHC.

8 4. Defendant **KEITH HOWARD BUTTRICK** is the national sales manager of EHC
9 and trains its California sales agents.

10 5. Defendant **ELAINE BARBARA AGER HERRINGTON** is EHC's California sales
11 manager.

12 6. Defendant **JOHN EDLEY FITZWATER** is a California sales agent of EHC.

13 7. Defendants **DAVID ROBERT PERKINS** is a California sales agent of EHC.

14 8. The true names of defendants sued in this complaint under the fictitious names of
15 **DOES 1 through 10** are unknown to plaintiff who therefore sues such defendants by such fictitious
16 names. Plaintiff will amend this complaint to show their true names when their names have been
17 ascertained.

18 9. All the defendants described in paragraphs 2 through 8 shall be collectively referred
19 to in this complaint as "Defendants".

20 10. Whenever reference is made in this complaint to any act of an individual defendant,
21 that allegation shall mean that defendant acted individually and jointly with the other defendants
22 within the actual or ostensible scope of his or her authority.

23 11. Whenever reference is made in this complaint to any act of any corporate defendant,
24 that allegation shall mean that corporation did the acts alleged in this complaint through its officers,
25 directors, employees, agents and/or representatives while they were acting within the actual or
26 ostensible scope of their authority.

27 12. Defendants engaged in a conspiracy, the purpose of which was to make the untrue
28 or misleading statements and commit the acts of unfair competition alleged in the First and Second

1 Causes of Action.

2 13. Defendants aided and abetted the violations of law alleged in the First and Second
3 Causes of Action by making a conscious decision to assist others in performing the wrongful acts
4 alleged therein.

5 14. The violations of law occurred in Sacramento County and elsewhere in California.

6 ***DESCRIPTION OF DEFENDANTS' BUSINESS PRACTICES***

7 15. EHC sells magnetic mattress pads and magnetic seat cushions at seminars held at
8 various restaurants in California. The company mass-mails postcards primarily to senior citizens
9 that invite the recipients and up to five guests to attend a free dinner seminar to "Learn what
10 PROMINENT PHYSICIANS and MAJOR MEDICAL UNIVERSITIES have to say about our
11 SAFE and EASY way to GET HEALTHY AND STAY HEALTHY! Relieve Pain, Sleep Better,
12 Improve Circulation, Reduce Inflammation."

13 16. When seniors accept the invitation, reservations are made for them to attend the sales
14 presentations at a local restaurant at a specific date and time. The sales presentations are given in
15 private rooms by EHC sales agents. EHC pays for the meals and room expenses.

16 17. Sales agents follow an EHC-approved script. A typical presentation lasts
17 approximately 45 minutes. At the beginning of the presentation, sales agents make a cursory claim
18 that EHC's products are not "medical devices." They then discuss how seniors can take "one more
19 very exciting step towards improving your health preventatively, therapeutically, naturally and
20 completely safely" through Magnetic Field Therapy. EHC's agents claim that using EHC's magnetic
21 mattress pads and magnetic seat cushions help people suffering from fibromyalgia, polyhmyalgia,
22 lupus, sciatica, herniated discs, asthma, bronchitis, cataracts, chronic fatigue syndrome, colitis,
23 diverticulitis, heart disease, indigestion, nausea, infections, inflammation, irritable bowel syndrome,
24 pinched nerves, macular degeneration, mental problems, multiple sclerosis, pain, injuries, seizures,
25 sleep disorders, women's health problems, and 35 other health conditions. They represent that actors
26 Dick Van Dyke and Anthony Hopkins, former Miami Dolphin's quarterback Dan Marino, and
27 professional golfer Jim Colbert benefitted from magnetic therapy. They also claim studies by Baylor
28 College, Vanderbilt University Medical Center, and Tufts University School of Medicine found

1 magnetic therapy to be effective. Sales agents further claim EHC's "'concentric circle magnets' are
2 the ONLY magnets CLINICALLY PROVEN to reduce pain, accelerate healing & improve
3 circulation."

4 18. EHC offers spurious discounts to customers who purchase its magnetic mattress pads
5 or magnetic seat cushions during the sales presentation. Purportedly, the regular prices for the twin,
6 full, queen, and king sizes of EHC's magnetic mattress pads are \$1,198, \$1,398, \$1,598 and \$1,798
7 respectively. Customers are told they will save between \$400 and \$700 by purchasing magnetic
8 mattress pads "today." EHC does not sell its magnetic mattress pads at their so-called "regular
9 prices." Instead, customers pay the lower "discount" prices. Sales agents also claim the regular price
10 for one seat cushion is \$298, but customers can receive two cushions at that price if they buy
11 "today."

12 19. Each magnetic mattress pad and magnetic seat cushion comes with a "100%
13 Satisfaction Guarantee." Defendants tell customers if they use the magnetic mattress pad or
14 magnetic seat cushion for 100 days and are not completely satisfied, they can return the product for
15 a complete refund. Defendants tell customers if they return the product before the 100-day trial
16 period expired, they will be required to pay shipping costs and a \$75 processing fee. Customers who
17 cancel their contracts do not receive timely refunds. Often, Defendants do not make refunds until
18 after a governmental agency has contacted EHC about customer complaints. Additionally,
19 Defendants do not give customers their oral and written notification of their right to cancel within
20 three business days as required by law.

21 FIRST CAUSE OF ACTION

22 VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17500 23 (UNTRUE OR MISLEADING STATEMENTS) ALLEGED BY THE PEOPLE AGAINST ALL DEFENDANTS

24 20. Plaintiff incorporates paragraphs 1 through 14 of the this complaint as though they
25 were set forth here.

26 21. Defendants EUROPEAN HEALTH CONCEPTS, INC.; KEVIN M. TODD;
27 KEITH HOWARD BUTTRICK; ELAINE BARBARA AGER HERRINGTON; JOHN
28 EDLEY FITZWATER; DAVID ROBERT PERKINS; and DOES 1 through 10, inclusive, make

1 or have made or cause or have caused, directly or by implication, untrue or misleading statements
2 to be made to members of the public in violation of Business and Professions Code section 17500
3 with the intent to sell magnetic mattress pads and magnetic seat cushions. The untrue or misleading
4 statements include, but are not necessarily limited to, the following:

5 A. Actors Dick Van Dyke and Anthony Hopkins, former Miami Dolphin's
6 quarterback Dan Marino, and professional golfer Jim Colbert benefitted from their use of
7 EHC's magnetic mattress pads, when in fact they had neither heard of EHC nor used any of
8 its products;

9 B. Customers who purchase EHC's magnetic mattress pads and/or magnetic seat
10 cushions during EHC's sales presentation will save hundreds of dollars. In fact, EHC's so-
11 called "regular prices" are fictitiously high prices and its so-called "discount prices" are its
12 regular, every day prices; and

13 C. EHC manufactures the magnetic mattress pads and the magnetic seat cushions
14 it sells, when in fact it does not.

15 22. Defendants knew or by the exercise of reasonable care should have known at the time
16 the statements set forth in paragraph 21 were made, that they were untrue or misleading.

17 SECOND CAUSE OF ACTION

18 VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200 19 (UNFAIR COMPETITION) ALLEGED BY THE PEOPLE AGAINST ALL DEFENDANTS

20 23. Plaintiff incorporates paragraphs 1 through 19 and 21 through 22 of the this complaint
21 as though they were set forth here.

22 24. Defendants **EUROPEAN HEALTH CONCEPTS, INC.; KEVIN M. TODD;**
23 **KEITH HOWARD BUTTRICK; ELAINE BARBARA AGER HARRINGTON; JOHN**
24 **EDLEY FITZWATER; DAVID ROBERT PERKINS;** and **DOES 1 through 10**, inclusive,
25 commit and committed unfair competition as defined in Business and Professions Code section
26 17200 by engaging in acts or practices which include, but are not necessarily limited to the
27 following:

28 A. Defendants sold and delivered "new devices" (as defined in Health & Saf.

1 Code, § 109975) without having obtained approval as required by Health and Safety Code
2 section 111550;

3 B. Defendants sold, offered for sale, and delivered a misbranded "device" (as
4 defined in Health & Saf. Code, § 111430) in violation of Health and Safety Code section
5 111440;

6 C. Defendants advertised a device as having an effect on bone or joint diseases;
7 diabetes; mental disease; heart and vascular diseases; and diseases, disorders, or conditions
8 of the immune system in violation of Health and Safety Code section 110403;

9 D. Defendants falsely represented EHC manufactured the magnetic mattress pads
10 and magnetic seat cushions they sold when in fact EHC did not manufacture the mattress
11 pads or seat cushions;

12 E. Defendants sold mattress pads with labels that failed to comply with section
13 1126 of title 4 of the California Code of Regulations. The labels fail to show the size of the
14 mattress pads or the net weight of filling materials. The manufacturer's registry number
15 required to be included on the label is not that of the manufacturer, but of another company;

16 F. Defendants made false or misleading statements of fact concerning reasons
17 for, existence of, or amounts of price reductions in violation of Civil Code section 1770,
18 subdivision (a)(13);

19 G. Defendants entered into home solicitation contracts (as defined in Civil Code,
20 § 1689.5, subd. (a)) without giving the oral and written notice of cancellation required by
21 Civil Code section 1689.7 and entered into seminar sales solicitation contracts (as defined
22 in Civil Code section 1689.24, subd. (a)) without giving the oral and written notice of
23 cancellation required by Civil Code section 1689.21;

24 H. EHC is a foreign corporation transacting intrastate business in California
25 without having first obtained from the Secretary of State a certificate of qualification as
26 required by Corporations Code section 2105; and

27 G. Defendants made untrue or misleading statements in violation of Business and
28 Professions Code section 17500 as more specifically set forth in the First Cause of Action.

1 **WHEREFORE**, plaintiff prays that:

2 1. Defendants, their successors, agents, representatives, employees and all persons who
3 act in concert with them be permanently enjoined from making any untrue or misleading statements
4 in violation of Business and Professions Code section 17500 including, but not limited to, the untrue
5 or misleading statements alleged in the First Cause of Action.

6 2. Defendants, their successors, agents, representatives, employees and all persons who
7 act in concert with them be permanently enjoined from engaging in unfair competition as defined
8 in Business and Professions Code section 17200 including, but not limited to, the acts or practices
9 alleged in the Second Cause of Action.

10 3. Pursuant to Business and Professions Code section 17536, the court assess a civil
11 penalty of two thousand five hundred dollars (\$2,500) against each defendant for each violation of
12 Business and Professions Code section 17500 alleged in the First Cause of Action. Plaintiff
13 requests that a civil penalty of no less than five hundred thousand dollars (\$500,000) be imposed
14 against each defendant.

15 4. Pursuant to Business and Professions Code Section 17206, the court assess a civil
16 penalty of two thousand five hundred dollars (\$2,500) against each defendant for each violation of
17 Business and Professions Code section 17200 alleged in the Second Cause of Action. Plaintiff
18 requests that a civil penalty of no less than five hundred thousand dollars (\$500,000) be imposed
19 against each defendant.

20 5. Pursuant to Business and Professions Code Section 17206.1, the court assess a civil
21 penalty of two thousand five hundred dollars (\$2,500) against each defendant for each violation of
22 Business and Professions Code section 17200 alleged in the Second Cause of Action committed
23 against a senior citizen. Plaintiff requests that a civil penalty of no less than five hundred thousand
24 dollars (\$500,000) be imposed against each defendant.

25 6. Defendants be ordered to make full restitution of all money or other property that may
26 have been acquired by their violations of Business and Professions Code sections 17200 and 17500.

27 7. Pursuant to Business and Professions Code sections 17206, subdivision (d) and
28 17536, subdivision (d), defendants be ordered to pay the reasonable expenses incurred by the

7.

1 Department of Consumer Affairs in the investigation and prosecution of this case

2 8. Plaintiff recovers its costs of suit.

3 9. Plaintiff have such other and further relief as the nature of the case may require and
4 the court deems appropriate and just.

5 DATED: September 9, 2002

6 BILL LOCKYER, Attorney General

7

8

By Michael R. Botwin
MICHAEL R. BOTWIN
Deputy Attorneys General

9

10 Attorneys for Plaintiff, the People of the State of California

11

12

13 SEE CIVIL CODE SECTION 446 REGARDING VERIFICATION OF THE ANSWER

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28